

## **REMARKS**

This application is being prosecuted under a request for continued examination after final rejection. In the preceding office action, the grounds for rejection in the final rejection were withdrawn and new grounds for rejection were entered for claims 1-47 and 51-65. Claims 48-50 and 66-68 have been indicated to be allowed. Based on the amendments and remarks herein, reconsideration and withdrawal of the rejections applied to claims 1-47 and 51-61 is respectfully requested.

In the office action, the Examiner provides a recitation of the basis for support for the various claims in patent applications for which a claim of priority has been made in this application. It is the applicants' position that the claims presented in this application are substantially supported by the applications recited in the claim of priority. Further, the Examiner has indicated in several places in the office action that an effective filing date for the claims is 10/2/2006. The applicants respectfully disagree with this characterization of the effective filing date. The present application has a filing date stated on numerous pieces of correspondence with USPTO of 10/2/2000, not 10/2/2006. The applicants respectfully request correction in the next office action.

Claims 1-4, 6, 8-18, 22-26, 28-35, 37, 39-47 and 51-65 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Benetti et al 5727569 in view of Vierra et al 5749892. In response, the applicants respectfully traverse the rejection. Benetti et al does suggest that hand grips may be replaced by a conventional attachment for fixing the shaft to a stable support (Benetti et al col. 6, lines 47-50). However adding the shaft structure of Vierra et al to that of Benetti et al would not make the applicants' invention. Vierra et al has arm members extending from the end of a shaft that are spring-biased into v-shape when in their deployed condition. Placing the suction members of Benetti et al onto the shaft of Vierra et al would also produce a v-shaped configuration for the suction members. They would not be in a parallel configuration as required in the applicants' claims because Vierra et al has very specific reasons for having them in a v-shape. In Vierra et al, the arms placed in a v-shape may engage both sides of an opening in a blood vessel or two different vessels that are separated by a distance of 10-50 mm. (Vierra et al col. 7, lines 27-30). The v-shape, therefore provides flexibility for positioning of the arms on structures within the heart that may be either farther apart or closer together by

placing the portion of the v-shape having the most appropriate distance between the arms for the distance between the structures to be contacted. This is not the approach taken in the applicants' invention. Notwithstanding the inapplicability of the combination of Benetti et al and Vierra et al to the applicants' claimed invention, the applicants have made amendments to the claims herein in the interest of advancing the application to allowance. Independent claims 1, 23 and 31 have been amended to recite that the actuator having a first control member and a second control member. The first control member selectively controls the movement of the first and second tissue engaging members between their first and second positions. The second control member selectively controls the movement of the first and second tissue engaging members between the second and third positions. Similarly, independent method claim 32 has been amended to recite that spreading of the first tissue engaging member away from the second tissue engaging member within the patient's body is accomplished by moving a first control member and that controlling the spreading of the first tissue engaging member away from the second tissue engaging by a selective amount of parallel spreading is accomplished by moving a second control member. Support can be found for these amendments in the application, for example, in the discussion related to drawing figures 34 and 45 and particularly in the specification at page 39, lines 1-5; page 39, line 19 to page 40, line 5; and at page 45, lines 5-16. Dependent claims 69-73 have also been added to more fully claim the invention. The concept of first and second control members to control separate aspects of spreading of the tissue engaging members is not disclosed in either Benetti et al or Vierra et al. For these reasons, withdrawal of the rejection of claims 1-4, 6, 8-18, 22-26, 28-35, 37, 39-47 and 51-65 is respectfully requested.

Claims 5, 27 and 36 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Benetti et al in view of Vierra et al and further in view of Furnish 5498256. In response, the applicants respectfully traverse the rejection. Remarks made above with respect to the combination of Benetti et al and Vierra et al are also pertinent to this rejection. Further, with respect to the Furnish reference, that reference discloses a surgical tool having a lever on a handle which activates a pivoting element operating between an open and closed position at the distal end. It does not disclose the use of

parallel closing elements or the use of two control members to effect closure of the different portions of the closure of the pivoting element. For these reasons, withdrawal of the rejection of claims 5, 27 and 36 is respectfully requested.

Claims 7, 29 and 38 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Benetti et al in view of Vierra et al and further in view of Garrison et al 5613937. In response, the applicants respectfully traverse the rejection. Remarks made above with respect to the combination of Benetti et al and Vierra et al are also pertinent to this rejection. Further, with respect to the Garrison et al reference, that reference discloses various control configurations for a retractor including sliding knob, rotating knob, scissors handles, or plunger. However, it does not disclose the use of parallel closing elements with two control members to effect closure of the different portions of the closure of the retractor. For these reasons, withdrawal of the rejection of claims 7, 29 and 38 is respectfully requested.

A request for a two month extension of time and a supplemental information disclosure statement accompany this amendment. Please charge the fees for the extension of time and supplemental information disclosure statement to Deposit Account No. 13-2546.

If the Examiner comes to believe that a telephone conversation may be useful in addressing any remaining open issues in this case, the Examiner is invited to contact the undersigned attorney at 763-391-9661.


Please charge any required fees or credit any overpayment to Deposit Account  
No. 13-2546.

Examination and reconsideration of this application are respectfully requested.

Respectfully submitted,

Date: April 4, 2007

By

  
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